PUBLIC SERVICE PENSION PLAN BOARD

1987 ANNUAL REPORT

Alberta

90-00319/

Alberta

PUBLIC SERVICE PENSION PLAN BOARD

1203, Legislature Annex, 9718-107 Street, Edmonton, Alberta, Canada T5K 1E4 403/427-7105

The Honourable Dick Johnston
Provincial Treasurer

Sir:

I have the honour to submit to you the second report of the Public Service Pension Plan Board for the period January 1, 1987 to December 31, 1987. The report outlines the role and responsibilities of the Public Service Pension Plan Board under legislation governing the plan.

Case summaries and summaries of recommendations made are included to provide an indication of our activities during the twelve month period under review. Comments made on all aspects of the plan have been presented with the view of strengthening the plan.

Yours truly,

J. E. Faries, FCIS, PAdm.
Chairman

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CHAIRMAN'S REPORT

The second full year of operation of the Public Service Pension Plan Board was completed on December 31, 1987.

Meetings

During the year nine meetings (eight regular and one special) were held to deal with 21 appeals and to develop recommendations to the Minister on benefit and policy matters.

Appeals

The appeals this year were different in nature from those received during our first period of operation. In the previous year approximately 55 percent of the cases heard dealt with reciprocal agreement transfers; this was reduced to 35 percent in 1987. With the maturing of the appeal process, it was noted that arguments and information were presented more effectively by both the appellants and the respondent.

Several cases were reviewed by our investigation section and were either returned to Payroll and Pensions or resolved to the members' satisfaction. Of the cases heard, 50 percent were decided in favour of the member. In addition to applications relating to reciprocal agreements, there were appeals on topics such as pensionable service, re-employment of pensioners, eligibility to participate in the plan, pension benefits and time limits.

Two decisions were appealed to the Court of Queen's Bench, one by the appellant and the other by the Minister. The Courts, during our reporting period had only dealt with one appeal.

In the case heard, the ruling of the Board to confirm the Minister's decision was overturned by the Court.

Member Input

More appellants took the advantage to appear in person, or be represented, before our tribunal thus increasing average length of hearings. In most of the cases, the Minister was represented at the hearings by legal counsel or a senior staff member of Payroll and Pensions of Alberta Treasury.

Hearing Process

An overall assessment of the operation of the Board shows that there was an improvement in the hearing process. Many of the appellants and applicants appearing considered the hearing fair and accepted the decision made in their case. The Public Service Pension Plan Board will continue to provide a fair hearing for every appellant, keeping in mind the implication of each decision upon the plan.

Early Retirement

The Early Retirement Incentive Program introduced by the Government during the year had a major impact on the plan. There was a marked increase in the number of early retirements. The overall impact of this program, from a cost point of view, is difficult to determine at this point. However, it is clear that there will be additional costs to the plan to fund retirements resulting from the program.

Training Seminar

A seminar was held to provide training for Board members and to honour those who no longer served on the Board. The seminar covered topics such as pension reform, board member responsibility, legal aspects of the hearings, judicial review, women's issues in pension and investments. Board members from all six Government Pension Boards were present. Special guests present included representatives from The Board of Administrators of the Teachers' Retirement Fund, Alberta Government Telephones, Pension Administration and other employer and employee groups. The Minister's speech was well received by members and his participation at the special recognition of retired Board members was a highlight of the seminar.

Resignation

Leroy Morgan left the Board during the year. Mr. Morgan served as the Alberta Union of Provincial Employees' representative for 20 years. His involvement and wisdom provided will be missed by his peers. He approached each subject and hearing with an open mind and positive attitude. Mr. Morgan retired from government service and is pursuing his "love" as the Manager of the Peace River Golf and Country Club. We wish him every success.

THE BOARD

Role

The role of the Board, as outlined in the legislation, is that of an appeal and advisory body. In its appeal function an attempt is made to ensure that a person is treated in accordance with the rules of natural justice. It is essential that, in acting as an appeal body, all aspects of the case are heard. The decision is then made on the basis of evidence presented. Each individual case is considered on its own merits, keeping in mind that the purpose of pension legislation is to provide a benefit to the member. As with the interpretation of all remedial legislation the "benefit of the doubt" is given to the party for whom the benefit was intended. The Board seeks to provide a balance between administrative practice and the rights of the individual member.

In its advisory role the Board provides advice to the Minister. Board members by virtue of their knowledge and experience provide valuable input to the decision making process. The Board consists of employee, employer, and government representatives and its recommendation is usually a consensus taking all sides of the question into account.

BOARD'S PROCEDURE

During the year the Board changed its procedures to enhance its operation.

Interested Parties

The identification of "interested parties," provided for under section 35 of the Act, was introduced in the procedures. To provide quick response and access to the hearing process, the Chairman is empowered to identify and notify parties he considers interested parties. Interested parties are those who have a direct financial, legal or policy interest in the outcome of the hearing.

Where a party, other than the appellant or respondent, seeks to intervene and in the opinion of the Chairman, is not an "interested party," the Board is provided with full details of the request. The Board then decides to allow or reject the application for status at the Hearing. The Chairman cannot reject a request for an appearance by a party who has an interest in the outcome and expressly requests permission to attend.

General Procedures

A change to general procedures was made to provide better coverage and more opportunity to uncover the truth of the matter in each case. Whenever an appeal is received, the employer is notified of the name of the appellant and the subject matter of the appeal.

This change to procedures was made to allow the employer to provide input. In some cases the input is in support of the appellant, in others to either defend or clarify the actions of the employer. The notice forwarded to the employer contains a summary of the appeal, unless a specific accusation against the employer was made and then additional detail is included. At this point the employer is asked to provide a written submission on the appeal. If the employer is an "interested party," it is advised of the right to be represented at the hearing. Once the appeal is finalized, the employer is advised of the decision and reasons.

Notification of the Right of Appeal

The provision of information to members, on the right to appeal, is an important component of the plan. To do this, Payroll and Pensions is encouraged to enclose the brochure "Appeal Process" and the form "Notice of Appeal" with every negative decision it renders. In several cases the appellants stated that they found out by accident of the right to appeal. The Ombudsman has also expressed concern that the information is not widely distributed and has this issue under consideration.

The Board published a brochure outlining the rights of individuals to appeal. Because of the multi-employer nature of the plan, it is difficult to guarantee that all members are aware of their rights. The plan booklets refer to the appeal process but for the reason stated, it is difficult to be sure that all members have them.

Court of Queen's Bench

Section 36 provides the right to appeal by a party aggrieved by the decision of the Board, on the basis of interpretation of law or jurisdication. The appeal should be filed within 30 days of receiving notice of the decision.

BOARD MEMBERS

The Public Service Pension Plan Board is a representative Board, covering members, the employers and the Government. In addition to the Chairman, there are two members representing employees, and one member representing employers and the government respectively.

MEMBERS

J. E. Faries

Mr. Faries was appointed Chairman effective November 1, 1985. He brings to the Board considerable background in pension policy and administration. He served for over 15 years as Director of the Pension Administration until December 31, 1979. He was actively engaged in education as Chairman and a member of the Advisory Council of the Employee Benefits Administration (EBA) program offered by the Faculty of Extension of the University of Alberta. He lectured for several years. He holds several senior positions on other boards and community organizations. His term of office on the Board expires on April 1, 1988.

A. F. (Chip) Collins

"Chip" Collins served as Deputy Provincial Treasurer from 1972 until his retirement in 1984. Mr. Collins was appointed a Board member and Vice-Chairman of the Board effective April 29, 1986. He brings to the Board extensive financial, administrative and senior public service experience. His term of office expired on April 1, 1987 (but was extended to April 1, 1991).

P. Leroy Morgan

Mr. Morgan was appointed to the former Public Service Pension Board in December 1967. He has wide experience in representing members of the Alberta Union of Public Employees. His concern for the welfare of members and fiscal health of the plan has been a major asset. His term of office expired on April 1, 1987.

Gilbert Heise

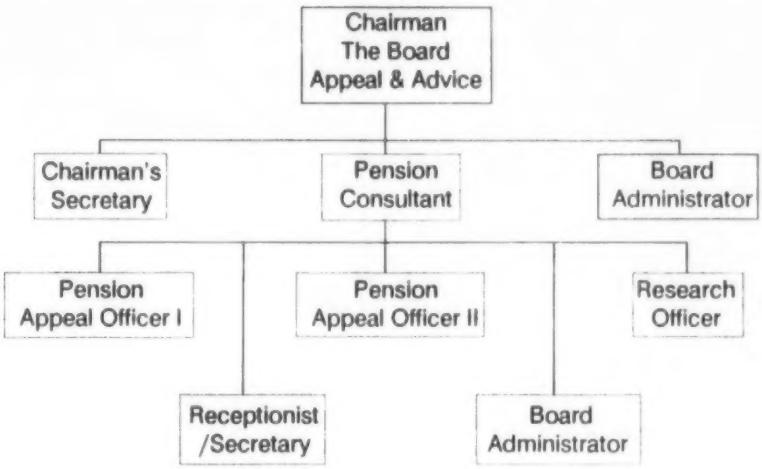
Mr. Heise, representing the employer, was appointed to the Board November 1, 1985. He has extensive experience in the employee benefit field. He is currently the Manager of Benefits and Salary Administration, Personnel Administration office. His term of office expires on April 1, 1988.

Clifford Craig

Mr. Craig represents the Alberta Union of Public Employees and has served on the Board since November 1, 1985. He provides a good understanding of the position of employees under the plan. His term of office expires on April 1, 1988.

STAFF

There is a small staff that assists the Board with its responsibilities by researching and developing information for consideration. These individuals provide advice on actuarial, legal, and industry norms for consideration.



APPLICATIONS & APPEALS

APPEAL PROCEDURE

Under the legislation the Board is responsible to hear appeals registered by a party who is aggrieved by a decision of the Minister.

A person can appeal any decision that affects the rights to which he may be entitled under the Pension Plan.

A partial list of issues which may be appealed are as follows:

Participation	Retirement
Re-employment	Selection of Options
Contributions	Disability
Termination Rights	Transfers
Pensionable Service	Early Retirement
Beneficiaries	Determination of "Spouse"
Prior Service	Status
Time Limits	Deferred Benefits
Benefits	Survivor Benefits
Pension Choices	Death Benefits

A "Notice of Appeal" form, approved by the Minister, is used in registering an appeal. The form is made available to the member through Payroll and Pensions or the office of the Chairman of the Pension Board. The form is a self-addressed and stamped document designed to make the registration of an appeal as simple as possible. The person is required to register an appeal within 30 days of the date of being informed of the decision made by the Minister. (The Board has authority to extend the 30 day limit where in its opinion the circumstances warrant.)

The appeal or application is then reviewed by the Appeals Officer who prepares the case for the Board. The officer is authorized to provide assistance to the appellant in preparation of the case, advising of what facts should be gathered and how they should be presented.

The appellant may be advised of previous decisions made by the Board on similar cases to allow assessment of his own appeal and to make an informed decision whether or not to proceed.

In order to ensure that the parties to the appeal have all the facts, copies of the written submissions are exchanged.

All parties

- have a right to notice of hearing;
- have a right to be represented by counsel or other representative;
- may be given a rehearing if the facts of the case so warrant.

The matter is heard by the Board and once a decision has been made, the parties to the hearing are notified in writing of the decision and reasons for the decision.

Reasonable out-of-pocket expenses of appellants have been authorized for payment if approved by the Chairman.

APPLICATIONS

There are two types of applications for time limit extensions considered, one under Section 10 of the Act and the other under reciprocal transfer agreements.

Under Section 10, the legislation provides that, where there is a time limit under the plan, the Board has the authority to extend such time limits. The Board is required to review each case in order to be satisfied that no material fault is attributable to the applicant. It must also be proven that the failure will or could result in a person obtaining different benefits than those he would have received had the time limits been met.

Where the pension paid to the individual is proven to be the result of a mistake or misunderstanding, the Board has authority to declare the choice revoked if application is made within three months and the member's circumstances have not been materially changed.

Extensions of time limits under reciprocal transfer agreements are considered under a clause in the agreement itself. The majority of agreements require two time limits to be met. One requires that a person must, within a period of three months of ceasing employment (participation) under the importing plan. The second is the requirement that the person must apply to have the transfer made within one year of commencement under the importing plan. The Board may, if circumstances warrant, grant an extension of the time limits and permit the transfer. Extension of time limits are only granted under extenuating circumstances.

SUMMARY OF CASES

Type	#	%
Time Limits	11	55
Contributions	2	10
Pensionable Service	5	25
Re-employment	1	5
Benefit (Spousal)	1	5
Total	20	100

During 1987, the Board met eight times to consider 20 cases. These appellants felt aggrieved by the decision made in their cases. Of the total cases heard, 11 were upheld by the Board and remedy provided. In nine cases the decisions of the Minister were upheld and members' appeals dismissed.

Of the appeals considered 55 percent related to the time limits under the plan. The remaining 48 percent were divided between contributions, pensionable service, re-employment, and benefit entitlement.

Appeal to the Court of Queen's Bench

Two cases were appealed to the Court of Queen's Bench during the year.

Section 36 of the Act provides a right of appeal where an appellant, the Minister, or any party is aggrieved by the decision of the Board. The courts hear appeals based on jurisdiction or interpretation of the law. Two appeals were heard: one was launched by an individual on the interpretation of law and the other by the Minister on the basis of jurisdiction.

Case 1 - Interpretation of Law

An appellant (see page 19) had service under the Teachers' Retirement Fund, transferred to the Public Service Management Pension Plan. He then became employed in a non-management position and participated under the Public Service Pension Plan. He applied to purchase two months of service, July and August, under the Public Service Pension Plan, but his application was denied because the Minister considered that the service had already been recognized under another plan. The Board confirmed the Minister's decision.

The Court of Queen's Bench reversed the Board's decision and recognized the service. The Court also awarded costs against the Minister on "a solicitor and client basis".

Case 2 - Jurisdiction of the Board

A second appeal to the Court of Queen's Bench (see page 14) remains outstanding during the reporting period of 1987.

CASE NOTES

The purpose of these notes is to illustrate the nature of the cases received during the year. It is also intended that they provide assistance to plan members in developing appeals, to employers in identifying areas where they may have been deficient, and to Alberta Treasury in developing improved procedures and systems to deliver pension benefits to plan members. We trust as well that they will provide assistance to the Minister in planning future policy and amendments.

Only written applications are considered by the Board, however many complaints are resolved at staff level.

CASE 1

On May 2, 1985, Payroll and Pensions telephoned the employer about a lack of contributions for a period in 1984 . The employer advised that the employee was receiving Workers' Compensation Benefits. On May 16, 1985, when pension choice information and application were mailed to the appellant, no mention was made of the contribution deficiency. In July 1986 Payroll and Pensions wrote to the appellant advising of an outstanding deficiency of $378.06 and requested payment within 30 days. The letter also advised that if the request was not complied with, the amount would be withheld from her pension cheques. Payroll and Pensions invoiced the employer for the employer portion of the $378.06 deficiency and the employer made payment. On August 14, 1986, Payroll and Pensions wrote the appellant, advising that having not received a reply to their letter of July 8, 1986, $63.01 would be deducted from each of six monthly pension cheques to recover the deficiency.

The appellant was not advised of the deficiency until some time after the deficiency occurred (1984) and after her retirement (July 1985).

Consequence of the Decision of the Minister

The decision of the Minister to deduct the employee's contribution deficiency from pension cheques resulted in less disposable income during the deduction period.

Disposition by the Board

The Minister's decision was upheld and the appellant's request for a refund of the deductions made for the contribution deficiency was denied.

Reasons for the Decision

1. It was clear that the amount assessed by Alberta Treasury was statutory contribution required to establish the time as service.

2. The amount assessed was the contribution required in 1984; no additional penalty or interest charges were added.

3. Appellants receiving a pension which includes the value of the service for which the payment in question was assessed.

4. Upon receipt of payment in full, pension being paid will return to the full amount.

P87:04:05

CASE 2

The appellant began employment on April 20, 1972 and started contributing to the Public Service Pension Plan (PSPP) August 1, 1976. In April 1981, on behalf of the appellant, the employer submitted a request to establish prior service for the period April 20, 1972 to July 31, 1976. Payroll and Pensions forwarded a Notice of Cost on November 4, 1982. No action was taken either by the appellant or the employer on this costing advice. In July 1986, Payroll and Pensions received the appellant's application for retirement effective September 21, 1986. The appellant requested Payroll and Pensions that she be allowed to change her retirement date to July 18, 1986, which was the date her retirement application was received by them. At the lawyer's request, Payroll and Pensions provided information in October 1986, at which time the 90-day time limit after termination of employment to buy prior service was highlighted. The appellant's lawyer felt she chose the wrong pension option and that the retirement date should be September 20, 1985. An appeal was filed in January 1987, with an enclosed a memorandum by the employer to the appellant, stating the date of retirement as September 20, 1985.

Although the appellant had the right to defer her pension, it was determined that under the circumstances it would have been unwise for her to do so. She was not entitled to workers' compensation or unemployment insurance monthly payments upon termination of employment.

Consequence of the Decision of the Minister

The decision of the Minister in setting the date of commencement of pension payments as September 21, 1986, and his refusal to permit the purchase of a period of prior service resulted in reduced income.

Disposition by the Board

The Minister's decision was vacated and the appellant's effective date of retirement was set as September 20, 1985.

In addition, the time limit was extended to permit her to buy a period of prior service from April 20, 1972 to July 31, 1976.

Reasons for the Decision

1. First, there was a lack of communication or incorrect information was provided resulting in the retirement date being set. A memorandum from the employer also supported the appellant's position.

2. The Board noted that the Prior Service Notice of Cost form in this case did not specify the 90-day time limit. With a language difficulty, it is conceivable that the employee was not fully informed of the situation. Further, the Board viewed that the benefit to the appellant, of purchasing her prior service, should have been communicated to her by her employer on termination of her employment.

P87:04:02 and P87:04:03

CASE 3

The case involved an application for an extension of a time limit, on a break in service under the reciprocal agreement between the Local Authorities Pension Plan Board and Public Service Pension Board, dated August 4, 1964.

The applicant was employed by a participating Local Authority from June 2, 1980 to October 31, 1984. He participated in the Local Authorities Pension Plan from September 1, 1980 to termination of employment. The applicant started full time employment with the Department of Municipal Affairs on January 16, 1986, a break in service of more than one year and seven months. The agreement requires that a person be employed within three months, unless the time is extended by the Board.

Applicant's Case

The applicant stated that he was unsuccessful in obtaining employment with a body where he could continue his pension. He provided a list of applications made during the intervening period. He also stated that because of the downturn in the economy, he could not find employment as an assessor. He worked at various jobs during the intervening period. He said that his intention was to build upon the pension he started. He requested the Board to consider this and extend the time limit to permit the transfer to occur.

Minister's Case

A representative of Payroll and Pensions Division stated that the administration had no choice but to reject the request since the applicant had not met the requirements. He reminded the Board that the intention of the agreement was to allow the transfer of pension upon a transfer of employment. He stated the position taken by the Minister in his letters of August 4, 1987 and December 19, 1986.

In his August 4, 1987 letter he advised:

"My view remains that these transfer agreements were designed only to encourage employees not to reject employment offers from reciprocating employers because of inability to transfer pensionable service. Therefore, reciprocal agreements are intended only for those employees who move immediately from one reciprocal employer to another".

In his December 19, 1986 letter he advised:

"In considering extension under reciprocal agreements, I intend to entertain only those applicants who had been offered and accepted a job with a participating employer before ceasing contributions to the exporting plan, but were unable to join the new plan within three months because of circumstances beyond their control . . . ".

Disposition by the Board

The application for an extension of the time limit was denied.

Reasons for the Decision

1. Circumstances in the opinion of the Board did not warrant an extension.

2. The service could be purchased as prior service under the plan.

P87:11:05

CASE 4

On November 9, 1979, the appellant terminated employment and contributions to the Public Service Pension Plan (PSPP). On November 13, 1979, he began employment with a local authority and commenced contributions to the Local Authorities Pension Plan (LAPP). In January 1980, a refund of contributions and interest from the PSPP was forwarded to him. On receiving an application for recognition of prior service for the period May 1, 1976 to November 11, 1979 while under PSPP, Payroll and Pensions issued a Notice of Cost based on the reciprocal agreement service rates. Payroll and Pensions had no further correspondence with the participant until December 1986. At that time he wrote stating that he withdrew his contributions from LAPP based on wrong information. He claimed he was told that under a reciprocal agreement, he would have up to five years from the date of separation to apply for the pensionable years of service at 4 percent interest. He said he had not been advised of the 1979 policy change governing prior service. The appellant submitted a statutory declaration in support of his appeal.

Findings

Board minute P64:11:04 was superseded by P78:02:06. It appeared that P64:11:04 might have been the basis of the information provided to the appellant.

Consequence of the Decision by the Minister

The decision of the Minister not to allow reinstatement under the Public Service Pension Plan to transfer contributions and pension credits to the Local Authorities Pension Plan results in lesser pension benefits being available to the appellant.

Disposition by the Board

The appeal was denied.

Reasons for the Decision

The Board did not find enough evidence to support the appeal and determined that the pamphlet advising of the change on prior service costing had been widely distributed before the appellant's termination from his previous employment.

P87:05:06

CASE 5

In February 1983, Payroll and Pensions received a completed Request for Enrollment form showing that the appellant was employed in a full time recurring term position. The appellant had two periods of leave without pay, August 1, 1983 to September 5, 1983 and May 25, 1984 to September 9, 1984. In April 1985 Payroll and Pensions received a letter from the employer advising that due to a system error, contributions had not been submitted for the applicant since May 1983. In May 1986, Payroll and Pensions received a request from the employer for a costing of the two periods of leave without pay. Payroll and Pensions advised the employer that an Application for Recognition of Prior Service was required for the 1983 leave. The 1984 leave could not be purchased because the application had not been made within 90 days after the appellant returned to work. In June 1986, the employer informed Payroll and Pensions that because of a breakdown in communication in both offices, the appellant could not apply for her 1984 service. The reason for the denial of the purchase of her 1984 leave without pay was because pension contributions, by error, did not start until April 1, 1985.

Consequence of the Decision by the Minister

Because of the delay in the commencement of contributions until April 1, 1985 (due to a system error at employer level), the appellant was not eligible to apply for the purchase of her periods of leave without pay until on or after April 1, 1985.

Disposition by the Board

The time limit was extended to allow the purchase of a period of leave of absence without pay, May 24, 1984 to September 9, 1984.

Reason for the Decision

The appellant was not materially at fault since she was not advised of the time limit governing the purchase of the leave in question and since the employer inadvertently delayed in commencement of remittance of contributions.

P87:04:06

CASE 6

The Appellant terminated employment with a participating employer and started to receive pension on July 1, 1986. On finalizing her pension, Payroll and Pensions informed the appellant that before accepting employment with any public body, she should contact them. In addition, re-employment information was forwarded to the appellant. During November 1986, Payroll and Pensions received a letter from the appellant with the information that she began a teaching contract on September 15, 1986. She also enquired what the implications, if any, would be on her pension. (The three month period after retirement ended on September 30, 1986, by which time the appellant had worked a total of 15 hours.) Payroll and Pensions advised the appellant that her employment contravened the regulations. She was asked to repay $1,241.62; the pension amount received for the period September 15 to September 30, 1986. The appellant wrote Payroll and Pensions, requesting a review of the decision and enclosing a copy of her teaching contract, which stated that the instructor was an independent contractor and not an agent or employee of the government. In December 1986, Payroll and Pensions affirmed the suspension of pension for the period in question on the basis that the appellant was "engaged to work during the period". Payroll and Pensions received a memorandum from the Alberta Vocational Centre confirming that the appellant's employment ended on November 7, 1986.

The appellant only worked a total of 15 hours at $14.27 per hour.

Consequence of the Decision by the Minister

One month's pension was withheld, because of the appellant's return to employment, within three months of retirement. The amount withheld was considerably more than she had earned.

Disposition by the Board

The Minister's decision was varied; the pension amount to be suspended was set at $214.05 to offset the income received during re-employment.

Reasons for the Decision

1. Withholding of one month's pension was punitive.
2. The salary earned during re-employment was less than the dollar value of the pension.
3. The appellant's hourly pension rate was $14.27. She worked 15 hours, therefore, recovery amount should be $14.27 x 15 hours or $214.05.

P87:05:04

CASE 7

The appellant started employment with Alberta Transportation and participated in the Public Service Pension Plan (PSPP) during September 1982. During early 1983 he requested recognition of a period of service with the Department of Highways of Ontario for the period August 7, 1957 to August 9, 1965. In May 1983, he was provided a Prior Service Notice of Cost which showed that for eight years and three days the contributions required were $4,857.67. He was informed that a minimum monthly payment of $45.00 was required. The terms and conditions of the payment were laid out on the form. One specific statement was "You have 90 days from the date of this notice to pay the balance or arrange a payroll assignment, or make an annual payment as described above. If a payment is not received, or a payroll assignment put into effect within the 90-day period, your prior service cost will be recalculated. The new cost will be based on the salary or wages you are being paid at the time the first payment is received".

The appellant took advantage of the Early Retirement Incentive Program offered by the Government. As a part of his planning he inquired about the pension he would receive.

The Minister then advised the employing department of a mistake in the 1983 advice and reassessed the appellant $83,000 for eight years of service. The appellant was told that if he did not pay the amount, the length of pensionable service would be reduced to six months. It was now clear that the appellant would not be able to obtain the required five years of pensionable service until March 31, 1987, effectively reducing his pensionable service from 12.5 years to a minimum vesting period of five years.

Appellant's Case

The solicitor for the appellant put forward three arguments to support her client's position that the Minister should stand by the original costing. She claimed that the source providing the information was one on which the appellant should have been able to rely. She stated that the appellant relied to his detriment on the information received and therefore the remedy of estoppel should be applied.

The second position presented argued "unconscionable" cost. The service being purchased was priced beyond a reasonable amount and thus was unconscionable.

Finally, a Charter argument was advanced. It was claimed that the appellant's Mobility Rights were violated in such a way as to restrict him from pursuing gainful employment in another province. Also the service provisions discriminated between those employees whose service was rendered within Alberta and those whose prior service was outside the province.

The solicitor cited KASK v. SHIMIZU ET AL and R. v. OAKES. and stated that there was a right protected by the Charter. He argued that in this case there was no justification to sustain the restriction of that right under section 1 of the Charter.

The solicitor confirmed the relief sought by the appellant as follows:

1. The 1983 costing should stand.

2. Costs be awarded
   a) legal fees
   b) expenses in flying to Ontario to attend an interview, and
   c) lost opportunity costs.

Minister's Case

The solicitor for the Minister took the position that the Board had no jurisdiction to hear a Charter argument. He stated that he was of the view that only a Court can decide whether the law is valid or not. He cited a case heard by the Public Service Management Pension Board (BLACKSTONE) in which it declined to hear a Charter argument. Further arguments were available but he felt that it was not necessary to put them forward.

He further stated that the Board was not a Court of Equity and therefore could not deal with an equity settlement; it only had authority to correct mathematical errors made by the Minister. Furthermore, he

argued that section 35 provides no authority for the Board to award costs.

Independent Legal Advice

The Board sought an opinion from their legal consultant who provided advice on whether the Board was a Court of competent jurisdiction under the Charter.

In respect to the Charter question, there are two schools of thought. One was that "any person involved in enforcing a law which is contrary to the Charter would have to take note of the Charter and give effect to it. There were several cases in which courts of limited jurisdiction (that is, "inferior" courts) and other administrative bodies had applied the Charter. The second point taken by Mr. Justice La Forest, writing for the majority of the Supreme Court, stated " . . . general application to other administrative tribunals, then those tribunals themselves should not apply the Charter, but either remit the matter to a superior court for determination, . . .". The legal consultant concluded, "I am not able to answer this question (regarding a Court of competent jurisdiction, section 24 of the Charter) with certainty".

In respect of the extent of power in section 35(6) of the Board, the Board was advised that it can only vary, vacate or confirm the decision of the Minister, it cannot provide another solution.

As to the question of whether there was a valid contract in place, the consultant concluded that " . . . in my opinion, it is open to the Board to rule that there is a valid contract between the appellant and the pension administration; and this would end the matter". He went on to advise that if there was a contract, the Board could apply the doctrine of estoppel.

He advised that the Board does not have the statutory jurisdiction to grant remedy on the basis that the Minister's actions are "unconscionable". In respect to costs, it was the opinion of the Board's legal consultant that in order to provide costs, the Statute creating the Board must provide such authority. He stated "No such provision exists in the Public Service Pension Plan Act".

In summary, he felt that the Board has only two options: either to find in favour of the appellant (on the basis that a contract was entered into as a result of his payment of the amount asked for or on the basis of estoppel); or the Minister is correct. No middle ground appears to be open to the Board in law.

Disposition by the Board

That the Minister's decision be vacated and the 1983 costing of prior service should stand. That a recommendation be forwarded to the Minister that the appellant's legal expenses incurred, in seeking his rights, for the hearing be paid. The request for expenses on the trip to Ontario and lost opportunity costs was denied.

Reasons for the Decision

1. Evidence presented supports that a contract had been entered into. There was an official offer, a clear acceptance and considerationof the direction.

2. Respecting costs:

   a) the appellant was compelled to engage legal help to ensure that the contract was honoured,

   b) the expenses on the Ontario trip of the appellant was voluntary on his part, and

   c) no evidence was presented in respect of any lost opportunity costs.

P87:09:01 and P87:09:02

CASE 8

The appellant started employment at a participating university and contributions to the Public Service Pension Plan (PSPP) on October 1, 1981. In December 1985, Payroll and Pensions received a letter from the appellant requesting recognition of her prior service from July 22, 1976 to September 30, 1981. The University claimed that she was not an employee of the university. On December 31, 1985, the appellant ceased contributions to the PSPP. She requested a transfer of her service credits to the Universities Academic Pension Plan (UAPP) to which she started contributions on January 1, 1986. She then applied for prior service. Payroll and Pensions advised that her employment status with the University would determine the costing basis of that service. The appellant's lawyer wrote Payroll and Pensions advising that neither the Canadian International Development Agency (CIDA) nor the university recognized the appellant as an employee during the period in question and requested that the Minister decide. At Payroll and Pensions' request, the University forwarded information on the case in September 1986. Payroll and Pensions issued a Notice of Cost based on "approved public body" service rates. The appellant's lawyer wrote Payroll and Pensions stating that the service should have been classified as University service (which would be costed on a lower rate). Payroll and Pensions advised that the appellant was considered an employee of the CIDA Trust, which was controlled by the University. Her service was therefore classified as approved public body service. Application did not involve any payments/contributions by the University. The issue was that the appellant wished to establish and pay for prior service at the lower rate.

The contract was between the University and the appellant. The University provided space, direction and control. The University also accepted gains or losses experienced by the Trust. CIDA merely provided funding to a point; shortfalls were made up by the university.

The selection interview committee consisted of the Provost of University College, Vice President of Finance and Dean of Education of the University.

An offer letter of employment was forwarded to the appellant signed by the Provost of the University College. Paycheques were issued by the university and TD-4's 1976 to 1981 named the University as the employer. The position of CIDA Coordinator was, on October 1, 1981, incorporated into the university's administration as a Foreign Student Advisor at a permanent Administrative Assistant II, Department of Student Services.

A "trust" is an obligation and not a legal person capable of contracting or hiring staff.

Consequence of the Decision by the Minister

The Minister's decision to classify a period of employment (with the University of Calgary as a Trust Employee) as service with a "Public Body" instead of service with an employer under the plan resulted in it being more costly.

Disposition by the Board

That the Minister's decision was varied. The appellant's request that the service in question be considered and costed as prior service with an employer on the basis that she was an employee of the University, was upheld.

Reasons for the Decision

1. The University contracted with the appellant to provide a service as the CIDA Coordinator at the University.

2. A "trust" is an obligation, not a person, and therefore cannot enter into a contract.

3. The agreement between CIDA and the University stated that CIDA would supply funds and the University provide the services.

4. When a shortfall in the Trust occurred, the risk fell on the University and they provided additional funds to cover the shortfall.

5. The risk of losses or claim against the appellant was the responsibility of the University as provided in the insurance clause of their contract with CIDA.

6. The offer of employment originated from the University and not CIDA.

7. The employment "test" in terms of hiring, remuneration, supervisor/control, profit or loss, provision of space or tools confirmed an employment status.

P87:04:02 and P87:04:03

CASE 9

The appellant was employed by the Department of Social Services and Community Health from October 14, 1975 to March 16, 1987.

The appellant began sick leave on January 20, 1986, nine days later a Notice of Cost of Prior Service was received by the central office of the employer. It forwarded a notice to the regional office where she worked. The employer contacted the appellant in February and April 1986 about her prior service. On August 1, 1986, the appellant returned from sick leave for a short time. She then recommenced sick leave. The employer mailed the 1986 leave of absence notice of cost to the appellant on February 17, 1987.

Appellant's Case:

A representative for the appellant presented the case. A key statement in her case was filed with a Notice of Appeal that it was "Due to circumstances regarding my resignation and absence pay I didn't have the necessary time or funds to pay my pensionable service".

Futhermore, the representative stated that in the confusion of the grievance, she made her intention to buy her period of leave. The document appeared not to have been delivered to Payroll and Pensions. He stated that she did make application on March 16, 1987 while she was still employed. A.U.P.E. confirmed that it had received the document (March 16, 1987) on March 24th; this would show there was "reasonable doubt" that the document was filed while still a participant. When the appellant was interviewed by telephone, she stated that she had sent the application on the bottom of the prior service schedule to the Pension Board. She also stated that she had no intention of leaving her position and felt it was not urgent that she respond to the Notice of Cost of Prior Service. No action was taken on the prior service because the appellant believed that she would win her grievance and be able to buy her prior service after the settlement of her grievance.

Minister's Case

A representative for Payroll and Pensions stated that it was the Minister's position that sections 9, 10, 11 and 12 of the regulations are <u>not</u> relevant. The pertinent information that the Board had to deal with was whether or not the appellant was a participant at the time she made application. He cited section 10(1) of the regulations to support his position. Simply, the Minister did not receive the application before the date of cessation of employment and therefore the application was not made while a participant. The Minister's view is that the appellant was requesting the Board order that she be reinstated as a participant and to allow the application. Revenue Canada's regulation was also cited as support not to recognize the service since they would not allow the payment as a tax deduction

Consequence of the Decision by the Minister

Refusing to recognize a period of prior service as eligible purchasable time under the plan would result in lesser benefits to the appellant.

Disposition by the Board

That the Minister's decision was vacated and the appellant was permitted to buy the period of prior service October 14, 1975 to September 30, 1976.

Reasons for the Decision

There is reason to believe that the application was made while the appellant was a participant.

P87:11:03

CASE 10

The appellant began employment with the Alberta Government on September 1, 1970. Previous to employment with the Government, the appellant was employed by several public service bodies. The period in question arose during a period of employment with the Edmonton Public Library. During employment with the City, she was granted periods of leave of absence without pay, from September 1, 1953 to May 31, 1957 and from September 1, 1958 to January 30, 1962. While employed by the City, because of a marriage, she was removed from the pension plan established by a City by-law. Married female employees were not allowed to participate in the City's plan. When the appellant requested prior service she was given a cost, excluding the two periods of leave. The appellant wrote to Payroll and Pensions specifically requesting that she be allowed to buy the period of leave of absence without pay, granted by the City. This was a second and specific request to establish the time November 10, 1955 to May 31, 1956. The appellant had been advised that leave of absence granted by a former employer under a plan other that the Public Service Pension Plan (PSPP) could not be recognized. The appellant retired under the PSPP, taking advantage of the Early Retirement Incentive Program of the Alberta Government.

Appellant's Case

The appellant advised that she was barred from participation under the former City of Edmonton plan because she was a married female employee. She also advised that she had requested the period of leave of absence without pay be recognized as pensionable service. The appellant further stated that because she was forced to cease participation under the City's plan she could not buy the period of leave under that plan. She stated that the period of leave was granted to her to travel. She also stated that past injustices (exclusion of married females) should not be used against her.

Minister's Case

The plan clearly does not recognize a period of leave of absence without pay granted by an employer participating in another pension plan. The fact that the appellant was excluded under the previous plan did not impact upon the decision and any employee who had a similar leave of absence without pay under a previous plan would not be allowed to buy the time.

Consequence of the Decision of the Minister

The decision of the Minister denied the appellant the ability to purchase a period of leave of absence without pay granted by the City of Edmonton.

Disposition by the Board

The Minister's decision was confirmed and the appeal denied.

Reasons for the Decision

1. The policy in place under the plan has been applied consistently. A period of leave of absence without pay, not established while under a previous plan and transferred under a reciprocal agreement, is not recognized.

2. Leave of absence without pay is not defined as service.

P87:09:05

CASE 11

On July 2, 1981, the appellant started employment under the Public Service Management Pension Plan (PSMPP), but did not terminate from the Teachers' Retirement Fund (TRF) until August 31, 1981. During November 1982, Payroll and Pensions received a transfer from TRF in respect of service from September 1959 to June 30, 1981. In August 1986, Payroll and Pensions adjusted the length of service (the period July 1, 1981 to December 31, 1981) to show .5000 years of current service under the PSMPP. The appellant's position changed and he began participation under the Public Service Pension Plan (PSPP) in January 1984. In November 1986, Payroll and Pensions, on receiving application to have the service July to August 31, 1981 established as prior service, advised the appellant that the period of service could not be approved, as this service had been recognized under the PSMPP. At the appellant's request for an explanation, Payroll and Pensions confirmed that in December 1986 section 16(3) of the PSPP Act applied; otherwise the appellant would receive duplicate recognition of service for two months. The appellant initiated an appeal on the basis that section 16(3) of the Act did not exclude service for which he applied. Teaching service during July and August 1981 is not currently credited under any pension plan and should be allowed under the PSPP.

Payroll and Pensions first provided its report on this appeal on February 19, 1987 under PSMPP. Having been advised that the appellant is now in the PSPP, Payroll and Pensions re-submitted information on the appeal, March 13, 1987.

TRF verbally confirmed that it had transferred all of the appellant's service to the PSMPP in 1981.

The contributions that the appellant paid towards his July and August 1981 TRF service were transferred and used to partially pay the deficiency in the PSMPP. However, his July to August 1981 TRF service was not recognized under the PSMPP. The two months from TRF were considered duplicate service and therefore not recognized under the PSMPP.

Consequence of the Decision of the Minister

Refusal by the Minister to recognize a period of two months teaching service, as prior service, under the Public Service Pension Plan would result in reduced service.

Decision by the Board

The Minister's decision was confirmed.

Reasons for the Decision

1. Section 16(3) of the PSPP Act applies in this case.
2. No further service is available for transfer from the Teachers' Retirement Fund.
3. The appellant has received financial recognition for the two months in question when his excess contributions from TRF were used to pay for part of the deficiency under the PSMPP.
4. Teachers who joined government after teaching a full year would not have their July and August service recognized for pension purposes under any other plan.

(The appellant took advantage of Section 36 of the Act and appealed the Board's decision to the Court of Queen's Bench.)

The Court of Queen's Bench reversed the Board's decision and ordered the service recognized. Justice Marshall also awarded costs against the Minister on "a solicitor and client basis."

P87:05:03 and P87:06:02

CASE 12

The plan member passed away on September 12, 1986 in an automobile accident. He had been employed by the Department of Public Works Supply and Services since October 15, 1982. He was a participant in the Public Service Pension Plan (PSPP) for a total of 3.9128 years. Section 28 of the Act requires that under the circumstances of this case, the benefits be paid first to the spouse, and if there is no spouse, a designated beneficiary or person entitled to receive benefits at the time of his death.

The deceased was married on October 8, 1955 and separated from his legal spouse April 15, 1967. There were two sons born to the couple. He agreed to pay child support of $125 per month and the payments continued until 1982. There was no record of legal separation or divorce.

The appellant began a common-law relationship with the deceased during 1978 or 1979 in Laval, Quebec. There was evidence of joint ownership of a home in Alberta; ownership of the couple's two motor vehicles; ownership of a tent trailer and a joint insurance policy. Several declarations were submitted confirming the common-law relationship's existence. The relationship apparently ended in the Spring of 1986, when the house was sold and the furniture divided.

Findings

The Minister, under the circumstances, considered himself bound under current pension legislation to provide the death benefit to the legal spouse. The Minister determined at the time of death the appellant was not the spouse of the deceased. The legal spouse was considered an 'interested party' and was given all pertinent data on the case to permit her to act as an intervener. She provided information by correspondence but chose not to attend the hearing.

In 1962, the deceased completed a Designation of Beneficiary form for the pension plan, naming his son, by the legal spouse, as his first beneficiary and the appellant common law wife as the second beneficiary. Facts revealed that on June 2, 1986 he named his younger son as his first beneficiary and his elder son (previously named as first beneficiary) as his second beneficiary.

Information from the deceased's employer showed that in June 1986, the deceased and the appellant had separated. A memorandum from the Commodity Manager, Public Works Supply and Services, stated that at the "time of death the deceased was living alone". An internal memorandum from the Administrative Officer to the Supervisor, Pay and Benefits, dated December 16, 1986, stated that "In May 1986, Mr. G. approached me (Administrative Officer) with the request that he wanted to remove J., his common-law wife, from his pension and life insurance plans. He stated that she had left him and moved back East". The memorandum continued, "In our discussion E. (Mr. G.) said that he did not want to remove J. from the Alberta Health Care (AHC), Blue Cross and Dental plans until she had an opportunity to get settled". In August, the deceased took steps to remove the appellant from coverage under his AHC and Blue Cross plans.

The Minister attempted to get the necessary documents from the legal spouse to process the claim. She filed the following documents with the Minister:

- Certificate of Marriage
- her Birth Certificate
- Certificate of Death
- the deceased's Birth Certificate

The appellant filed her claim as the common-law spouse of the deceased and filed her Birth Certificate.

Appellant's Case

The appellant's representative appeared before the Board and presented her case. In support of the position of the appellant, a copy of a RCMP report dated September 2, 1987 was filed.

In summary the report stated:

That on two occasions in June 1986 the police were called upon to attend to and settle, domestic disputes between the appellant and the deceased. The disputes appeared to have been precipitated by "drinking" and entailed weapons and emotional conflict.

It was submitted that the RCMP report supported the reason for the separation as a matter of urgency and the appellant needed to protect herself. Further, the appellant had lived with the deceased for 8 1/2 years, therefore the clause requiring that the appellant must have been "residing with the participant at the relevant time" should be overruled. It was stated that they had "reconciled and planned to get together three days before the death. It was argued that the appellant's move to Quebec was a forerunner of the final move of both to live in Montreal; that the appellant had planned to return to Alberta once the deceased had secured a position in Calgary. Because the deceased had emotional problems, the appellant had set out conditions of reconciliation. She claimed that she had never made up her mind to leave the member and would have married him had he divorced his wife.

Minister's Case

The responsibility of the Administration is to apply the legislation. The section dealing with the definition of a spouse is three fold and progresses through clauses (i), (ii) and (iii) in its application. The first clause (i) did not apply since the legal spouse was not dependent upon the deceased. The second clause dealing with the common-law spouse also failed since there was no evidence that "she lived with the deceased *immediately preceeding* the relevant time". The relevant time was the time of the event that generated the benefit. Clause (iii) appeared to be the only applicable clause and it was applied to provide the benefit to the legal spouse.

Intervener's Case (Interested Party)

All input by the legal spouse was by correspondence.

She confirmed that the separation in April 1967, left her with two sons. She obtained employment and provided support for herself and the boys. The deceased paid $125 per month for child support.

The legal spouse added that she had paid all expenses, including the appellant's claim for money for the camper and the gold shares. She advised that the Quebec Pension Board had advised her that she would be receiving the Widow's pension. From the discussion arising with a staff member of the Quebec Pension Board, she learned that the appellant had also claimed for Q.P.P. The legal spouse's sister was named to administer the estate of the member.

Consequence of the Decision by the Minister

As a result of the the Minister's decision to grant the spousal benefits under the Public Service Pension Plan to the legal spouse, the appellant will not receive any pension benefits.

Disposition by the Board

The Minister's decision was confirmed.

Reasons for the Decision

1. The deceased acted to remove the appellant as his beneficiary for his life insurance and pension plans in May 1986, signifying the end of the relationship.

2. The deceased removed the appellant from coverage under the Health Care Insurance Plan and Blue Cross. The delay until August was to let the appellant "get settled" in Quebec and take out her own coverage.

3. The police report clearly showed that the appellant stated that she was ending the relationship.

4. The appellant, under police supervision, removed her half of the furniture from the home.

5. The appellant laid down two conditions that had to be met before she would "go back," indicating that she had left. No evidence was presented to show either of the conditions were met.

6. The condominium in Montreal was in the appellant's name only and the deceased had an apartment in Edmonton.

7. No proof that the appellant was living with the deceased "immediately preceeding" the relevant time (death).

P87:09:02

ADVISORY FUNCTION

Legislation provides that the Board may advise the Minister respecting any functions or matter relating to the Plan, including:

a. the adequacy of contributions to meet benefits,

b. adjustments to protect pensioners from inflation,

c. rates of interest for the purposes of the Plan,

d. benefits,

e. reciprocal agreements,

f. recognition of prior service,

g. eligibility and participation in the Plan, and

h. the actuarial tables prescribed or to be prescribed by the Minister.

RECOMMENDATIONS

In its responsibility as advisor to the Minister, the Board made recommendations during the year. The following provides an overview of the recommendations made.

During the year, 12 recommendations were made suggesting improvement of the plan or its delivery.

Type	#	%
Plan Improvements	6	50%
Administrative Improvements	3	25%
Other	3	25%
Total	12	100%

Staff of the Board develop reports and provide research information to the Board in order that its members are fully informed on the matters before them. The reports include a review of the norms of the industry and how other jurisdictions have dealt or are dealing with the topics.

Comments on pension reform in Canada and how it impacts upon our plan is outlined. Usually a series of options are presented for consideration.

Where necessary statistics from areas outside of Canada are also provided to ensure full consideration of all relevant statistics and information.

The reports are usually refined and developed into a Board report. The recommendation is then forwarded to the Minister for consideration.

ADVISORY ROLE

During the year 1987, the Board completed a review of the Public Service Pension Plan. A report was forwarded to the Minister outlining the Board's recommendation. The issues raised during the review were as follows:

FUNDING

Statutory Contributions for Current Service

RECOMMENDATION

Statutory employee and employer contribution rates should be adjusted over a transitional period to levels equalling the normal actuarial costs.

Employees and employers should jointly share these costs through equal contribution rates.

The rates should be set by regulation so that proper adjustments may be made if necessary.

In setting the appropriate current service contribution:

- the rate of return should reflect returns earned by large private sector funds;
- actuarial assumptions and method should be 'less conservative' than those used for the March 31, 1985 actuarial valuation;
- employee/employer/Government input into the actuarial assumptions used to set the statutory rate should be required.

PRESENT STATUS

Participant contributions are established in the Act and Regulations as being:

Year	Percentages of Salary	
	Over YMPE	To YMPE
1987	4.025%	5.75%
1988	4.2%	6.00%
1989 and subsequent years	4.375%	6.25%

The employer matches the participant contributions.

The March 31, 1985 actuarial valuation shows that current contribution levels are not adequate to fund the plan for future service. It is assumed in the valuation that cost of living adjustments will be made annually in the future at 75 percent of CPI.

An independent actuary determined the March 31, 1985 actuarial assumptions and method to be "overly conservative" when measured against parameters the Board views as appropriate.

RATIONALE

Benefits should be funded as they accrue rather than being passed to the next generation.

Though the Pension Fund may not have the objectives of a private sector pension fund, contribution rates should be set assuming investment yields would equal those attained in a large private sector pension fund.

IMPLICATIONS

The actuarial opinion received suggested that the 1989 statutory contributions will equal or exceed the normal actuarial cost based on the parameters put forth by the Board.

The extent that Pension Fund earnings exceed or are deficient when compared to private sector pension fund yields, experience gains or losses will be generated.

Unfunded Liabilities

RECOMMENDATION

The Government should make payments to reduce the unfunded liability on an amortized basis over time.

PRESENT STATUS

The payment of all benefits is guaranteed by the Government.

The March 31, 1985 actuarial valuation shows total unfunded liabilities for the six Government administered pension plans to be $3.87 billion.

Since the assets in the Pension Fund are not segregated, the unfunded liability of the Public Service Pension Plan cannot be accurately determined.

The unfunded liability is doubling every 8-9 years due to nonpayment of interest.

RATIONAL

Payment of the unfunded liabilities will control the liabilities being passed to future generations, increase the security of plan participants and assign the cost of manpower to the appropriate operational time frame.

IMPLICATIONS

Payments of interest alone on the unfunded liability for the six plans would be approximately $300 million per year. Offsetting this cost could be interest earnings which exceed 8.5 percent interest.

COST OF LIVING ADJUSTMENT

Annual Adjustments

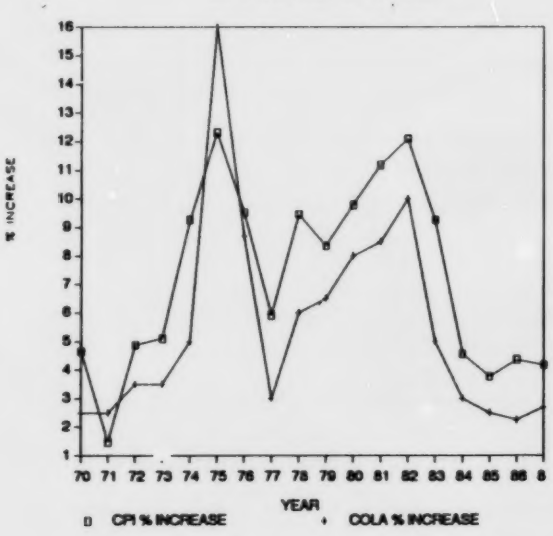
RECOMMENDATION

The Board recommended that pensions being paid under the Public Service Pension Plan Act be adjusted by 2.5 percent as of January 1, 1987.

CURRENT STATUS

In the past, the Lieutenant-Governor-in-Council authorized adjustments to the recipient of pensions under the Public Service Pension Plan on a pro rata basis. The proration was directly related to the date of retirement. In the years 1970 through 1987, COLA has been consistently applied on an ad hoc basis with the result that the average annual compound increase over this period represents 76 percent of the Canada CPI. A comparison of the previous adjustments is outlined in the diagram CPI VERSUS COLA.

CPI VERSUS COLA



Participants' contributions are scheduled to rise until 1989. At that time, the contributions will be sufficient to fund some COLA on future pension benefits. The Board's concern is that the levels of COLA to be granted are not defined in legislation.

RATIONALE

If current contributions are set on the basis of 75 percent COLA being granted, the adjustments should be assured in the plan legislation.

Other reasons for encoding COLA are:

- employees and pensioners could plan knowing to what extent their pensions would be protected from inflation, and
- to calculate commuted values of pensions on termination of employment, marriage breakdown, or transfers.

IMPLICATIONS

It is assumed in the actuarial valuation that future ad hoc COLA would occur annually at 75 percent of inflation. Therefore encoding COLA at this level would incur no additional costs.

PENSION REFORM

Participation

RECOMMENDATION

Participation of all employees in the Plan (except for special groups such as those in the STEP or PEP program) should be compulsory from date of hire.

PRESENT STATUS

Full-time noncontinuous employees with a contract of more than one year must participate. Part-time continuous employees *may* participate in keeping with the employer policy, provided regularly scheduled hours are not fewer than 728 hours per year or 14 hours per week.

RATIONALE

Increased participation is consistent with the objects of pension reform.

The Board decided not to base participation on minimum hours, earnings, or on employment status for the following reasons:

- Distinctions in classes of employment in Government are not clear-cut;
- The earnings floor of 35 percent YMPE in pension reform is based on net replacement ratio for Government benefits. In the Board's view, this would not apply under the plan because annual earnings and hours will likely increase for most employees over a career.
- With increased participation, there would no longer be a need to purchase prior Government service.
- Participants terminating employment after short service would not be penalized if credited interest at market rates were applied.

IMPLICATIONS

Administration of the plan would increase through additional enrollments and issuing of refunds to non-vested employees who cease employment.

Computerization of refunds should restrict the additional manpower required.

Fewer purchases of prior service would reduce administration.

Comment: in the Board's view, an alternate plan could be considered for other than full-time continuous employees.

Vesting

RECOMMENDATION

Vesting at Normal Pensionable Age should occur even if the requirement of five years of pensionable service is not met.

Five years of continuous participation (i.e., "participatory service") rather than five years of pensionable service should be used for vesting and early retirement (85 factor). Pensionable service would continue to be used for calculation of benefits.

PRESENT STATUS

A minimum of five years of pensionable service is required for pension eligibility.

Pensionable service is used in determining eligibility for early retirement without reduction.

RATIONALE

The recommended changes to vesting are consistent with the Alberta pension reform legislation.

The changes to vesting and application of the 85 rule are necessary for the equal treatment of full and part time employees.

IMPLICATIONS

Increases in costs would be minimal.

Locking-in

RECOMMENDATION

Pension benefits should be locked-in upon vesting.

PRESENT STATUS

Pension benefits are locked-in when immediately entitled to a pension benefit, i.e., with the attainment of age 55 and five years of pensionable service.

RATIONALE

The change would be consistent with the goal of the pension plan to provide income for retirement years. It is also consistent with pension reform legislation.

Further, the change would serve to preserve post-retirement spousal protection.

IMPLICATIONS

Costs would be minimal.

Credited Interest

RECOMMENDATION

Interest on employee contributions should be credited at a market rate.

In February 1986, it was recommended that the average rate of interest paid on non-chequable savings accounts for the previous year, be credited to members' accounts.

The Canadian Association of Pension Supervisory Authorities (CAPSA), later reached a consensus on crediting of interest to members' accounts, at the annual average yield on the five-year personal fixed term deposits, as published by the Bank of Canada. The second basis would be somewhat more generous over the long term.

PRESENT STATUS

Interest is now credited on contributions at four percent yearly compounded semi-annually.

RATIONALE

The change would be consistent with pension reform legislation.

An increased interest rate is required for reason of fairness in calculating of refunds on non-vested members and applying the minimum pension value on those vested at cessation of participation.

This would also remove a source of discontent among plan members.

IMPLICATIONS

The Wyatt Company recently estimated that the additional liability would be less than $400,000 for members predicted to die or cease employment before completing five years of service.

Previously Paterson Cook Ltd. had estimated costs varying from 0.05 percent to 0.1 percent of payroll for each 1 percent increase in interest.

OTHER PENSION MATTERS

Subsidy on Early Retirement

RECOMMENDATION

Early retirement factors should be adjusted to a true actuarial equivalency basis.

PRESENT STATUS

Factors now in use reduce the pension by about 30 to 40 percent of the true actuarial reduction.

RATIONALE

The recommended change would decrease the cost of early retirement pensions and thus improve the financial soundness of the plan.

IMPLICATIONS

As stated in 3.5(d), The Wyatt Company has tentatively concluded that if the early retirement subsidy was eliminated and the termination benefit provisions of the Employment Pension Plans Act were implemented, the net impact would be a reduction in cost of the plan.

The factors to be used are prescribed by the Minister.

Where the current subsidy is used to encourage early retirement, other incentives would be required to achieve that objective.

Division of Pension Benefits on Marriage Breakdown

RECOMMENDATION

The Board favours the implementation in Alberta of the recommendations of the Institute of Law Research and Reform dealing with the division of pensions on marriage breakdown. In addition, the following should apply under the plan:

(a) Upon request by either the employee or former spouse, a valuation of benefits accrued during the marriage will be provided by the pension administration, and

(b) Valuation and Division will be permitted under the plan without a court order, provided there is consent of both parties.

PRESENT STATUS

Current methods available for dividing pension benefits are Valuation and Accounting, and Division of Proceeds. Valuation and Division are not now available.

The pension administration will not provide pension information to a non-employee spouse on a written request of the employee only.

The pension administration will not assign a value to a benefit, therefore on marriage breakdown, the parties must seek advice from an independent source.

RATIONALE

Comments on the specific recommendations applying to the Plan are:

(i) The Canadian Institute of Actuaries' recommended basis be used for the valuation of accrued pensions on both termination of employment (for portability) and on marriage breakdown (for pension splitting).

(ii) The Board's recommendations would help encourage settlement outside of the Courts.

IMPLICATIONS

Together with portability, valuation and division of pension on marriage breakdown would serve to increase the outflow of cash from the Pension Fund in the near term.

Additional administrative costs would incur in valuing the benefits, and in actuarially adjusting the employee's benefits at termination, death or retirement. These costs, however, could be charged to the parties.

The recommendations would serve to make division of pension benefits easier and less costly under the Plan.

Portability and Minimum Employer Cost Rule

RECOMMENDATION

On termination of employment, transfer of the value of the vested pension should be permitted to:

(a) a pension plan of the new employer, if that plan accepts such transfer, or

(b) a locked-in RRSP, or

(c) an insurance company to purchase a life annuity.

The transfer value of a vested pension should be based on the recommendations for the computation of minimum transfer value of deferred pensions developed by the Canadian Institute of Actuaries (this basis is prescribed for private pension plans.)

The minimum employer cost rule should apply retroactively to all service, except prior service from another employer.

PRESENT STATUS

Transfer of funds is allowed only under the terms of a reciprocal transfer agreement; otherwise only withdrawal/transfer of employee contributions and interest is allowed.

No minimum employer cost rule provisions are now applied.

RATIONALE

The ability to transfer vested pensions enhances portability.

The 50 percent rule assures minimum employer contributions. Current reciprocal agreements could then be terminated or modified.

IMPLICATIONS

Referring to the cost implication, The Wyatt Company has tentatively concluded as follows:

". . . if the early retirement subsidy were eliminated and the termination benefit provisions of the (Employment Pension Plans) Act were implemented, the net impact would be a reduction in the cost of the plans."

Provision of portability would increase the outflow of cash from the Pension Fund in the near term, thereby increasing the need to address payment of the unfunded liability.

Recognition of Prior Service

Recommendation

The Board advised the Minister on recognition and costing of prior service in October 1986.

The recommendations were as follows:

(i) that certain types of service recognized under the plan become ineligible for purchase;

(ii) that the cost of reinstating service for which a refund was previously received be based on current salary;

(iii) that portability between Alberta public plans be reviewed by the Department before changes are made to recognition of contributory prior service under another Alberta Plan;

(iv) that commuted value amounts transferable under pension reform legislation be held in the individual's RRSP rather than being permitted into the plan, and

(v) that the minimum monthly prior service payment be increased, prompt application be encouraged and a market amortization rate of interest apply.

PRESENT STATUS

Costs levied vary depending on the type of service being purchased, the length of time since the service was rendered, and date of application. The costs do not relate to the actuarial value of the resulted increase in pension.

RATIONALE

Current provisions for recognition and costing of prior service are arbitrary and inequitable.

Recognition of prior service under other jurisdictions is more restrictive.

Purchase of prior service is one source of growth in unfunded liabilities.

The proposed tax changes and proposed changes to pension plan registration rules also impact on the provisions of prior service.

IMPLICATIONS

Changes recommended will reduce inequities between employees, increase fiscal responsibility, and lower administrative costs.

ACTION

As of the end of the reporting period, the recommendations were under active consideration by the Minister.

Part-Time Employees

During the year the Board considered the plight of employees who were employed on a part-time basis. The general view of the Board was that the current payment of salary to part-time employees was too low for the position being occupied since pension benefit was not provided. Presently, where an employer hires a wage or part time employee, only the employer has the ability to enroll that person in the pension plan. A person could be engaged in one of these capacities for several years without accumulating any benefit toward retirement.

The Board recommended that:

(a) The employer's right to enroll an employee on a selective basis should be removed.

(b) Where an employee, hired on a part time basis, works an average of 14 hours per week, that employee be enrolled in the plan, or

(c) failing accommodation of wage employees in the existing plan, a special plan be established to provide retirement benefits for them.

Communication

Distribution of Booklets

The Board is concerned about the distribution of the pension plan booklets. Several of the hearings showed that some appellants were not informed of the pension plan. We communicated with Payroll and Pensions to determine how booklets and other information is provided to the membership.

The Director of Payroll and Pensions responded that initially a small supply was made available to the employers. Employers then must order additional copies and make them available to participants. Because of the multi-employer nature of the plan, it is difficult to be sure that all employers distribute the booklets as requested.

When participants are not informed of their rights and responsibilities under the pension plan, deadlines are missed and inappropriate choices are made. Therefore, it is important that all participants are made aware of the sources of information available to provide information on the plan and its administration.

It is recommended that when each new participant is registered with Payroll and Pensions, a package of information should be provided to that individual. It might include a "Certificate of Registration" and the Information Booklet. This will place the employee on notice in respect of the pension plan and its operation. Participants could also be encouraged to check periodically for new issues of the booklets. This should help to reduce many of the appeals dealt with by the Board.

Appendix A

Plan Highlights

This summary does not constitute a legal interpretation of the Public Service Pension Plan Act. The Act and Regulations thereto should be reviewed for an interpretation in any specific circumstance.

The Public Service Pension Plan Act authorizes a pension plan for payments of pension and related ancillary benefits to employees who are eligible to participate in the Plan.

Eligibility for Participation

Persons eligible to participate in the Plan include full-time, part-time and other employees as defined in the Act.

Contributions

Employees are required to make current service contributions of 4.375 percent on salary up to YMPE, and 6.25 percent on Salary in excess of YMPE (YMPE is the Year's Maximum Pensionable Earnings for each calendar year as defined in the Canada Pension Plan).

Contributions are not required to be made after 35 years of pensionable service.

Employers are required to contribute an amount equal to the employee current service contributions.

Credited Interest

For the purposes of determining lump sum cash or transfer amounts, interest is credited on employee contributions at the rate of four percent per annum, compounded semi-annually.

Normal Retirement Age

The normal pensionable age is 65. The effective date of commencement of pension is the day after the person ceases to be an employee.

Normal Retirement Benefit

The benefit payable at normal retirement is an annual pension equal to

2.0 percent of pensionable salary multiplied by years of pensionable service prior to January 1, 1966, plus

the sum of 1.4 percent of pensionable salary up to the average YMPE and 2.0 percent of pensionable salary in excess of the average YMPE, multiplied by years of pensionable service on or after January 1, 1966.

Pensionable service does not continue to accrue after 35 years have been accumulated.

Pensionable salary is the participant's average annual salary in the five consecutive years in which his or her average salary was the highest.

Average YMPE is the average of the Year's Maximum Pensionable Earnings under the Canada Pension Plan in the five years preceding date of termination of employment.

Normal Form of Pension

The pension is payable for the lifetime of the pensioner or five years, whichever is longer. If the pensioner has a spouse, he or she will be deamed to have chosen a joint life pension with two-thirds continuing to the surviving spouse. Such joint life pension will be actuarially equivalent to a pension payable for the lifetime of the pensioner, guaranteed five years. Optional forms of pension on an actuarially equivalent basis are available subject to the completion of a spousal waiver form.

Benefits on Early Retirement

A participant, who ceases to be an employee after attaining age 55 and whose age and pensionable service total 85 or more, is entitled to a normal retirement pension commencing immediately.

A participant, who ceases to be an employee after attaining age 55 and the completion of five years of pensionable service, but whose age and pensionable service do not total 85, may elect to receive a pension commencing immediately that is actuarially equivalent to the pension that would be payable if his or her age were the lower of 65 or 85 less pensionable service. In practice, only one-third of the full actuarial reduction is applied.

Benefits on Disability

A member or a person entitled to a deferred pension, who is totally disabled, has completed five years of pensionable service, and is not receiving benefits under an approved disability plan, is entitled to receive a normal pension.

A person, who satisfies the above conditions but is partially disabled, is entitled to receive a pension that is actuarially equivalent to the pension that would be payable if his or her age were the lower of 65 or 85 less his or her pensionable service. In practice, only one-third of the full actuarial reduction is applied.

A person, who is receiving benefits from an approved disability plan, is not entitled to receive concurrently a disability pension from the Plan. While in receipt of benefits from an approved disability plan, participation in the Plan continues. Salary for the purpose of current service contributions or for the purpose of determining any pension to which the participant may subsequently become entitled, is the salary that was being earned immediately before disability benefits commenced, increased by any subsequent general increases applicable to his or her class of employment.

Benefits on Death before Retirement

On death prior to retirement of an employee or former employee who has contributions in the Plan and who has:

(a) no surviving spouse or dependent children, the beneficiary is entitled to a payment equal to employee contributions with interest;

(b) a surviving spouse or dependent children, the spouse or children are entitled to a payment of two times the employee contributions with interest.

If the deceased had completed five years of pensionable service, the surviving spouse may elect in lieu of (b) above:

(i) a pension for life calculated as though the employee or former employee had retired with an unreduced pension on the day before death and elected a joint life pension with 100 percent continuing on his or her death; or

(ii) a pension with a guaranteed term or a pension for life, with or without a guaranteed term, that is actuarially equivalent to (i) above.

Benefits on Termination of Employment

On termination of employment before the completion of five years of pensionable service, a participant has the option of

- receiving a refund of employee contributions with interest; or

- transferring employee contributions with interest plus any other amount transferable under a reciprocal agreement to another registered pension plan.

On termination of employment after the completion of five years of pensionable service but before being

entitled to receive an immediate pension, a participant has the option of:

- receiving a refund of employee contributions with interest;

- transferring employee contributions with interest, plus any other amount transferable under a reciprocal agreement, to another registered pension plan;

- receiving a pension commencing at or after age 55 that is actuarially equivalent to the pension that would be payable if his or her age were the lower of 65 or 85 less pensionable service. In practice, only one-third of the full actuarial reduction is applied.

Cost of Living Increases

The Lieutenant-Governor-in-Council, by regulation, may make adjustments in the pensions currently payable to pensioners and beneficiaries and in the pensions currently deferred to commence at some later date to maintain approximate parity with the cost-of-living.

Appendix B
EXCERPTS FROM THE PUBLIC SERVICE PENSION PLAN ACT
Division 2
The Public Service Pension Plan Board

Establishment, composition, term of office, etc.

5 (1) There is hereby established a board known as the Public Service Pension Plan Board.

(2) The Board shall consist of not fewer than 5 persons appointed members of the Board by the Lieutenant Governor in Council.

(3) The Lieutenant Governor in Council shall appoint 1 of the members of the Board from among persons nominated by the Alberta Union of Provincial employees.

(4) A member of the Board holds office for the term fixed in relation to him by the Lieutenant Governor in Council.

(5) The Minister may prescribe the remuneration and expenses to be paid to members of the Board.

(6) The Board may make rules respecting the calling of and the conduct of business at its meetings.

Chairman and vice-chairman

6 (1) The Lieutenant Governor in Council shall designate one of the members of the Board to be the chairman and another member to be the vice-chairman of the Board.

(2) The vice-chairman shall act as chairman when the office of chairman is vacant or when the chairman is absent or unable to act.

Support Services

7 The Minister shall provide such supplies, services and accommodation as he considers necessary to enable the Board to fulfil its objects.

Objects of the Board

8 The objects of the Board are

(a) to conduct the hearing of appeals under Part 6;

(b) to provide the advice to the Minister under section 9;

(c) where appropriate, to extend time limits and treat benefit choices as revoked under section 10;

(d) to exercise and perform any other powers and duties assigned to it by this Act and the regulations;

(e) to perform any other duties relating to the Plan that are assigned to it by the Minister.

Advisory functions of the Board

9 The Board may advise the Minister respecting any matters relating to the Plan, including

(a) the adequacy of contributions to meet benefits,

(b) adjustments to pensions under section 27,

(c) rates of interest for the purposes of the Plan,

(d) benefits,

(e) reciprocal agreements,

(f) recognition of prior service,

(g) eligibility and participation in the Plan, and

(h) the actuarial tables prescribed or to be prescribed by the Minister.

Board's power to extend time limits, etc.

10(1) Where

(a) a person fails to meet a time limit under the Plan,

(b) the failure will or could result in a person's obtaining different benefits than those he would have obtained had the time limit been met, and

(c) the Board is satisfied that the failure results from circumstances that import no material fault on the part of that person,

the Board may, on application to it, extend the time limit.

(2) Where

(a) the circumstances set out in subsection (1)(a), (b) and (c) apply,

(b) the benefit has been received or has commenced to be paid, and

(c) the Board is satisfied that a choice, including a deemed choice, that would otherwise be irrevocable under section 40(2) could materially prejudice the best interests of the recipient or his dependants,

the Board may, on application to it, treat that choice as revoked, extend the time limit for making the choice and order any consequential adjustments in the benefits.

(3) Where

(a) a benefit choice has been made, and

(b) the Board is satisfied that

(i) the choice communicated to the Minister was not that which the person making the choice actually intended, and

(ii) the application mentioned in this section does not result from a change in a person's circumstances affecting the choice,

the Board may, on application made to it within 3 months from the date when the benefit was received or commenced to be paid, treat the choice as revoked, substitute for it the choice that, in the Board's opinion, the person originally intended to make and order any consequential adjustments in the benefits.

PART 6
APPEALS

Appeal to the Board

35(1) A party aggrieved by a decision of the Minister under or in relation to Parts 2 to 5 or the prescribed provisions of the regulations, other than a decision under section 32 or one that could be the subject matter of an application under section 10, may appeal against that decision to the Board.

(2) A party wishing to appeal to the Board under this section must serve the chairman of the Board with a notice of appeal in the form prescribed by the Minister within 30 days of being notified in writing of the decision appealed against or within such longer period as the Board may, on application, allow.

(3) The notice of appeal must specify the decision appealed against and the grounds of appeal.

(4) The Board may identify persons who may be interested in the appeal and may give directions as to the persons to be served with the notice of appeal, whether or not they are parties.

(5) For the purposes of conducting an appeal under this section, the Board

(a) has all of the duties, power, privileges and immunities given to a commissioner appointed under the Public Inquiries Act by sections 3, 4, 7 and 9 of that Act, and

(b) shall be deemed to be a person authorized for the purposes of section 1(a) of the Administrative Procedures Act.

(6) The Board may confirm, vacate or vary the decision appealed against.

(7) The Board shall serve the appellant and persons who received a notice of appeal with a copy of its decision, including the reasons for the decision.

Appeal to the Court of Queen's Bench

36(1) A party aggrieved by a decision of the Board under section 35 may, within 30 days of the date of service of the Board's decision on him or such longer period as the Court may allow, appeal to the Court of Queen's Bench on a question of law or jurisdiction.

(2) The procedure in an appeal to the Court of Queen's Bench shall be the same as that provided in the Alberta Rules of Court for applications by originating notice.

(3) The Court of Queen's Bench, on hearing the appeal, may confirm, vacate or vary the decision of the Board or make any order it considers just.